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8
9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SANTA ROSA DIVISION

12 In re:

13 KINGSBOROUGH ATLAS TREE
14 SURGERY, INC.

15 Debtor.

Case No. 25-10088 (WJL)

Chapter 11

16 **ANVIL BUILDERS' SUPPLEMENTAL
OBJECTION TO JCC TRANSPORT SALE
MOTION**

17 Date: August 5, 2025

18 Time: 9:30 am

19 Location: 1300 Clay Street, Courtroom 220
Oakland, CA

20 **I. INTRODUCTION**

21 Creditor Anvil Builders, Inc. ("Anvil") objects to the Debtor's sale motion ("Sale Motion")
22 seeking permission to sell certain equipment to JCC Transport (Dkt. No. 148) because the sale involves
23 **payment of an undisclosed buyer's premium to Mr. Todd Eisenhauer.** During discovery in
24 connection with this Sale Motion, Anvil learned the Debtor has been allowing Mr. Eisenhauer to
25 collect a 10% buyer's premium from previously approved sales *and* intends to allow him to collect a
26 similar commission on the instant sale. This is wholly improper. The Sale Motion should be denied.
27 Furthermore, this conduct raises serious concerns about whether the Debtor should continue as a
28 debtor-in-possession.

1 **II. RELEVANT LAW: A BUYER’S PREMIUM IS PROPERTY OF THE**
2 **ESTATE**

3 Section 541 broadly defines property of the estate as “all legal or equitable interests of the
4 debtor in property as of the commencement of this case[.]” Bankruptcy Code § 541(a)(1), and §
5 541(a)(6) define estate property to include all “[p]roceeds . . . or profits of or from property of the
6 estate.” The Debtor owned equipment on the date of filing. These items were listed in its schedules.
7 The sale of that equipment is the sale of property of the estate. A buyer’s premium is a proceed or
8 profit from that property of the estate. *See* Bankruptcy Code § 541(a)(6).

9 Most bankruptcy courts squarely presented with this question agree. “That a buyer's
10 premium is added to the highest bid at the closing of the sale does not change the fact that it is part
11 of the total amount received in exchange for the estate property.” *In re THR & Assocs., Inc.*, No. 12-
12 72022, 2018 WL 279741, at *5 (Bankr. C.D. Ill. Jan. 3, 2018) (“*THR & Assocs.*”). “A ‘buyer's
13 premium’ is indistinguishable from a direct charge to the estate by the auctioneer for his services.”
14 *In re Maropa Marine Sales Serv. & Storage, Inc.*, 92 B.R. 547, 548 (Bankr. S.D. Fla. 1988); *see also*
15 *Priddy v. Eley (In re Rossmiller)*, 82 F.3d 426, 1996 WL 175369 at *2 (10th Cir.1996) (unpublished
16 decision) (stating that the gross proceeds from an estate auction constituted property of the estate,
17 and noting that “several bankruptcy courts have determined that a fee paid by a purchaser of estate
18 assets to a broker or auctioneer is a commission paid from the estate's proceeds” and listing cases);
19 *see also THR & Assocs.*, at *4 (“the weight of authority holds that amounts charged, retained, or
20 collected as a buyer's premium are property of the bankruptcy estate.”); *but see In re Remote*
21 *Operating Sys., Inc.*, 238 B.R. 656, 660 (Bankr. N.D. Tex. 1999) (held buyer’s premium not estate
22 property, but described as an “unpersuasive” analysis in *THR & Assocs.* at *4).

23 A buyer’s premium is property of the estate since the premium is a proceed from estate
24 property. Bankruptcy Code § 541(a)(6). Beyond the Bankruptcy Code, however, failing to treat a
25 buyer’s premium as estate property could lead to problematic results and create a host of poor
26 incentives for participants:

27 As a policy matter, this Court would be loathe to endorse a procedure where money
28 earned from estate proceeds could bypass the estate and go directly into an
auctioneer's pocket without being accounted for. Such a practice could easily be

1 abused. It is essential that the case trustee, as a fiduciary of the estate, collect and
2 account for all monies that result from the liquidation of estate property and then
3 disburse those proceeds according to the distribution rules set forth in the Bankruptcy
4 Code and Rules.

5 *In re Carpenter*, 392 B.R. 97, 104 (Bankr. D. Vt. 2008). A buyer's premium is property of the
6 estate.

7 **III. DEBTOR PROPOSES TO PAY (AND PAID) A BUYER'S PREMIUM**

8 Mr. Eisenhauer is a longtime friend of Mr. and Mrs. Kingsborough and former Debtor
9 employee.¹ During his deposition relating to this Sale Motion (on July 11, 2025), Mr. Eisenhauer
10 testified that as part of this sale, JCC would pay him a buyer's premium. Later he testified that other
11 buyers from approved sales in this case had also paid him a buyer's premium.

12 Q BY MR. PRAETZELLIS: So JCC is paying you a commission?

13 A Correct.

14 Q And what's the commission?

15 A Ten percent.

16 Q And when was that arranged?

17 A At the same time as what this was arranged.²

18 The Debtor affirmatively knew of and approved of this arrangement before filing the Sale
19 Motion:

20 Q Is the debtor aware that you are getting a ten percent commission on this
21 sale?

22 A Yes.

23 Q How is the debtor made aware of that?

24 A Verbal.

25 Q And when?

26 A At the time this was put into the bankruptcy court.³

27 Furthermore, we do not need to take Mr. Eisenhauer's word for it, Mrs. Cindy Kingsborough,
28 for the Debtor, testified consistently:

29 Q Okay. When did the debtor learn about Mr. Eisenhauer's commission to be
30 paid in connection with this sale?

31 A The debtor meaning –

32 Q KBA.

33 A -- KBA?

34 Q KBA. When I say KBA, I mean you or your husband.

35 A On this particular I don't know exactly when.

36 Q Did you learn about it before the sale motion got filed?

37 ¹ Praetzellis Decl. in Support of Objection, Ex. 1, Deposition of Todd Eisenhauer ("Eisenhauer
38 Deposition") 18:4-19:13.

² Eisenhauer Deposition at 53:10-16.

³ Eisenhauer Deposition at 53:20-54:1.

1 A Yes.

2 Q And Mr. Eisenhower mentioned receiving commissions on other sales that
3 have occurred in this case. Do you recall that testimony?

4 A Yes.

5 Q And did the debtor, and that means you or Mr. Kingsborough, know of
6 those commissions before those sale motions got filed?

7 A Yes.⁴⁵

8 If Mr. Eisenhower received a 10% buyer's premium on each approved sale in this case, the
9 amount of undisclosed property of the estate paid to him (with the knowledge and consent of the
10 Debtor) would be about \$136,000.⁶ Anvil must estimate this amount because the Debtor (and Mr.
11 and Mrs. Kingsborough's) state court counsel refused to let Mr. Eisenhower testify about which sales
12 he received a buyer's premium on and which he did not.⁷

13 Mr. Eisenhower even testified that a high buyer's premium discourages buyers by making it
14 more expensive for buyers to purchase the property:

15 Q. Does a high buyer's premium discourage buyers?

16 A. Possibly. But if it's -- but if it's good equipment, then -- and people need
17 the equipment, they will pay it.

18 Q. But a buyer's premium just makes it more expensive for the buyer; right?

19 A. Yes.⁸

20 The Debtor knowingly -- and without formal or informal disclosure to the Court or any
21 creditor -- sold approximately \$1.3 million worth of equipment through numerous sales and allowed
22 to Mr. Eisenhower to be paid a buyer's premium of 10% on some significant portion of that sale and
23 by his own admission artificially lowered the sale price. Another way to put it is that the only
24 purportedly cash accretive actions taken by the Debtor in this six-month-old case involved
25 knowingly improper payments made to a decades-long friend of the Debtor's principals. This Sale
26 Motion should be denied.

27 ///

28 ⁴ Praetzellis Declaration, Ex. 2, Cindy Kingsborough Deposition ("Kingsborough Deposition") at 42:5-8.

⁵ Stunningly, Mrs. Kingsborough -- after hearing the testimony about the buyer's premium -- testified that she thought nothing was omitted from her declaration in support of the JCC Sale Motion. Kingsborough Deposition at 32:19-33:3.

⁶ Sale Orders at Dkt. No. 43, 135, 138, 167, 200, 201 in the amounts of \$431,606, \$15,000, \$168,000, \$575,000, \$97,400, and \$82,000, respectively leading to total sales proceeds of approximately \$1.36 million.

⁷ Eisenhower Deposition at 55:8-56:19 (questions, objections, and instructions not to answer); *see also id.* at 57:12-20 (Mr. Eisenhower received a commission on some, but not all, sales in the case)

⁸ Eisenhower Deposition at 62:22-63:3.

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IV. CONCLUSION

This Sale Motion cannot be approved. In involves improper payment of a buyer’s premium with property of the estate that artificially reduced estate recoveries. Furthermore, Anvil respectfully suggests that Debtor’s conduct, by failing to disclose and obtain approval for these payments, raises serious concerns about whether the Debtor should continue as a debtor-in-possession.

Date: July 22, 2025

FOX ROTHSCHILD LLP

/s/ Jack Praetzellis
Jack Praetzellis
Attorneys for Anvil Builders

1 **PROOF OF SERVICE OF DOCUMENT**

2 I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business
3 address is 10250 Constellation Boulevard, Suite 900, Los Angeles, CA 90067.

4 A true and correct copy of the foregoing documents entitled: ANVIL BUILDERS' SUPPLEMENTAL
5 OBJECTION TO JCC TRANSPORT SALE MOTION will be served or was served **(a)** on the judge in
chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

6 **1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant
7 to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and
8 hyperlink to the document. On 7/22/25, I checked the CM/ECF docket for this bankruptcy case or adversary
proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF
transmission at the email addresses stated below:

- 9
- Jamie P. Dreher jdreher@downeybrand.com
 - Michael C. Fallon fallonmc@fallonlaw.net, manders@fallonlaw.net
 - Michael C. Fallon mcfallon@fallonlaw.net, manders@fallonlaw.net
 - Alan W Forsley alan.forsley@flpllp.com
 - Gabriel P Herrera gherrera@kmtg.com, bxiong@kmtg.com
 - Paul Gregory Leahy Paul.Leahy@usdoj.gov
 - Matthew P. Minser mminser@sjlawcorp.com
 - Office of the U.S. Trustee / SR USTPRegion17.SF.ECF@usdoj.gov
 - Jack Praetzellis jpraetzellis@foxrothschild.com, jack-praetzellis-1683@ecf.pacerpro.com
 - Michael A. Sweet msweet@foxrothschild.com, michael-sweet-6337@ecf.pacerpro.com
 - Philip J. Terry pjterry@cmprlaw.com, dhayes@cmprlaw.com
 - Jennifer C. Wong bknotice@mccarthyholthus.com, jwong@ecf.courtdrive.com
- 15

16 **2. SERVED BY UNITED STATES MAIL:** On N/A, I served the following persons and/or entities at
17 the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy
thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.
18 *Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24
hours after the document is filed.*

19

20 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION**
OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling
21 LBR, on N/A, I served the following persons and/or entities by personal delivery, overnight mail service, or
(for those who consented in writing to such service method), by facsimile transmission and/or email as
22 follows. *Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the
judge will be completed no later than 24 hours after the document is filed.*

23

24 I declare under penalty of perjury under the laws of the United States that the foregoing is true and
correct.

25

26 7/22/2025
Date

Kimberly Hoang
Printed Name

/s/ Kimberly Hoang
Signature